REMARKS

The present application has once again been thoroughly reviewed in light of the most recent Office Action of March 23, 2010. In view of the Amendments made herein, reconsideration of the rejection with a view toward allowance is respectfully solicited.

It is noted that Claims 20, 21 and 22 have been indicated as allowable.

Claim 6 was rejected on formal grounds as being indefinite under Section 112, the Examiner objecting to the wording "such as". The present amendment deletes this language from Claim 6 and accordingly, that claim should now be allowable.

Claim 25 is the only independent claim remaining in this application since Claim 1 has now been cancelled. All of the claims in the case now depend from Claim 25 or from claims dependent therefrom. Claim 25 has been substantially amended as more fully set forth below. Claims 4, 5, 7, 8, and 10 through 17, inclusive, were indicated as allowable if rewritten in independent form including all of the limitations of an allowable base claim and any intervening claims.

The Examiner has rejected claims 1, 9, 23 and 24 as unpatentable under 35 U.S.C. §103(a), applying the patent to Molyneux *et al.* (3,724,754 US) taken in view of Brown *et al.*(5,566,882 US). Claims 2 and 25 were rejected under 35

U.S.C. §103(a) as unpatentable over Brown *et al.* taken in view of Fasterding (4,802,623 US).

The Brown patent has been discussed in the original application. See page 1, lines 16 *et seq.* (note that EP-B-0 619 852 is the same disclosure) and in previous remarks appended to Amendments filed in this case.

Newly amended Claim 25 includes a recitation that at least one leg extends inside a receptacle of a holder that is connected to the concrete sleeper. This feature, that the receptacle is a part of a holder has apparently not been considered.

The present rejection of Claim 25 as noted above cannot be maintained. This claim provides that the holder from which the plastic clip extends that holds down a rail is inserted in an insert of electrically insulated material. This insert is cast in the concrete sleeper and is not removable. Such an arrangement provides the advantage that the holder is designed so as to be detachable and therefore replaceable when needed. Note in the original application:

> "designing the holder to be detachable and hence replaceable results in a high flexibility for positioning the holder and in the possibility of easy replacement in the event of damage. In contrast, holders are used in the case of clamps having an M or E-shaped geometry that are connected firmly, i.e. permanently to the concrete sleeper or a ribbed plate."

Claim 25 includes the feature that the holder is inserted detachably into the insert and also that the holder is connected with the concrete sleep via bolt means.

Brown suggests a holder for a clip being connected undetachably with a concrete sleeper. See Figure 6E. According to the Brown reference a clip 1 is received by an anchoring device 5 having an integrated stem which is cast into concrete sleeper 3. See the sectional showing in Figure 4 and from column 10, lines 43-52 of the Brown specification. There is neither an insert of electrically insulating material nor the possibility to connect the holder detachably with a concrete sleeper.

Accordingly, one of the main objects of our invention cannot be accomplished, i.e. replacing the holder in the event of damage thereto as set forth ion page 2, lines 15-17 of our disclosure. Consequently in Brown *et al*. it is not possible to replace the holder. Additionally, a plurality of elements are necessary to provide insulation. With such a construction the insulating elements are detachably connected with both the shoulder and the toe portion such that a loosening of the insulators is possible which is disadvantageous.

The above disadvantages are avoided by the present invention wherein the holder is placed into an insert consisting of electrically conductive material, the insert being cast into the concrete sleeper. Hence, loosening of the insulating material is not possible and additional insulating measure are unnecessary.

The secondary citation to Fasterding *et al.* has been previously considered and relates to a concrete cross sleeper system. Here, a clip holds down a rail and extends from a guiding plate 7 whose function is to arrange the rail 2 in an accurate position onto a concrete sleeper.

For this purpose, corresponding guiding plates 7 are arranged at both sides of the rail foot 13. Hence, concrete sleepers with different recess4es for receiving the guiding plates need to be used for different rail profiles, that is for rails having different base widths. This results not only in production difficulties but also in in connection with the storage of sleepers to be used for different rail profiles.

In our invention, the rails are held by means of clips extending from holders via which the rail is not guided. It is possible to use such a distance of the holders relative to each other that rails with different base widths can be fixed without the need for using different sleepers.

Fasterding lacks any teaching or even a hint for inserting the guiding plate 7 into an insert made of electrically insulating material and with the insert in turn being cast into the concrete sleeper. There is no showing of insulating the holder for the clip.

Further, Fasterding provides that a bolt can be screwed into a plug of polyethylene material cast into a concrete sleeper (column 4, lines 26 and 27). This, however, is not an insert according to the teaching of the invention which receives a holder for a clip.

In addition to the use of the plug according to Fasterding, there is no suggestion to have the guide element received by an insert of electrically insulating material because plug 17 is necessary to secure the screw 9 (see column 4, lines37-40). Nothing in the art suggests having the guiding element or plate 7 received by an insert of electrically insulating material.

With respect to dependent Claim 2, the teaching therein is not suggested or anticipated by Brown or Fasterding since on one hand, the references do not disclose an insert and on the other hand they lack even the slightest suggestion that an insert extends up to the surface of the sleeper and shows a cross section deviating from one of circular geometry because the plug of Fasterding has a circular cross-section and does not extend up to the surface of the sleeper.

In view of the amendments and the remarks as noted above, reconsideration of the rejection of the claims is respectfully solicited with a view to allowance of the application.

Respectfully submitted,

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June 22, 2010